App. F. IX-4

Previous References

193 3. (Law)

File No. /36-33

Serial Nos. /

(34)

Later References

Leg. 23-37(I-2)-A.

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. One

Part B for June 34

SUBJECT.

Cr. R. P no. 192/32-33 on the file of the Hcl—2nd Mysore (Mr. Sk. Venkatanarayana - Petitioner)

Records the order of the Hcl. in the above.

Dr. Abdul Aziz
30.6.34.

Serial No.

The judgment of the High Ct in the case against M. Venkatarang e execution of the extradition warrant by Tripathi Magte against him submitted for perusal

The decision is that the C Commissioners offence of 1876 is not to a 'non extraditable' offence, & that arrest warrant is not executable Mysore State

The decision has also for ground for the legislation re Extradition under consideration & it may be referred to the Objects & Reasons of the Extradit

Chief Secretary)
2nd member
1st Member
Dewan

10/5/34.

RR
10/5/34.

The decision is a reaching & its implications must carefully and in the Law Secretary decide that the Chief Com is not [illegible] has the force of law in Mysore it is applicable only to extradi Cases & that the arrest warrant not executable in Mysore. ~~State~~ deciding principles of the Jud Ct quite sound. It is ~~are~~ however

NOTE—Contn. Sheet.

WD 0434—GPB—15,000—12-10-32

Serial No.

~~hear the last of~~ that we may
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le as it sets aside a ~~case~~ practice
long standing. The Judgment makes
necessary to substitute an Extradn
edure for the present procedure which is
disapproved by the High Court.
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74463
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for
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In reply please refer to
No. 714

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 14th May 1934.

Laws 136-33-1

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

GENERAL
14 MAY

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

SIR,

Pond 14/5

Crl. Rev. Petn. No.192/32-33 on the file of the High Court. (Mr. S. K. Venkatarangiengar - Petitioner).

I have the honor to inform you that in the above case the High Court has allowed the Revision Petition holding that the warrant in question issued by the Tirupati Magistrate is not executable in Mysore.

I have the honor to be,
Sir,
Your most obedient servant,

A. R. Nageswara Iyer
Government Advocate.

Sub? for perusal
appl? copy of the order will be
called for.
TSD 21/5

Are there any previous
reps relating to this Petn
in the Law Secn or the Chf?
21/5

There are no Pr. refs in the Br.
TSD 21/5

Serial No.

The Judgment of the Full Bench of the High Court in this case is of great Constitutional importance and is submitted for perusal.

Gen Secy)
Chief Secy)

21/5-

OFFICE OF THE SECOND MEMBER OF COUNCIL
31 MAY 1934
No. 8946

CHIEF SECRETARY
25 MAY 1934

OFFICE OF THE FIRST MEMBER OF COUNCIL
1 JUN 1934
No. 9407

DEWAN'S OFFICE
6 JUNE 1934
No. 7223

Cont.
23.5.34

25/5/34

31/5/34

Member of Council
Dewan

31/5

31/5

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action has already been taken after making amendments in the Extradition Law

4/6/34

5/6/34

5/6/34

6-6-34

7/6/34

WD. 01536—GPB—7,500—5-4-34

1415734

Cr. R. P. No. 192 of 1932-33.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Monday the 23rd day of October 1933.

PRESENT:

Rajadharmapravina P. MAHADEVAYYA,

CHIEF JUSTICE

AND

JUSTICE K. SHANKARANARAYANA RAO.

CRIMINAL REVISION PETITION NO. 192 OF 1932-33.

Mr. S. K. Venkatarangaiengar,
Advocate, Bangalore City .... Petitioner.

(By Mr. C. V. Narasimhaiengar.)

Vs.

The Government of Mysore ... Opponent.

(By Mr. A. R. Nageswara Iyer,
Government Advocate.)

Criminal Revision Petition against the order dated 27th January 1933, passed by the City Magistrate, Bangalore (Mr. S. Narayana Rao) in Criminal Miscellaneous Case No. 68 of 1932-33, refusing to recall and retransmit to the Sub-Magistrate, Thirupathi, the arrest warrant, issued against the petitioner by the said Sub-Magistrate, under Section 7 of the Motor Vehicles Taxation Act (An Act of the British Indian Legislature in force in British India) and forwarded by the City Magistrate, Bangalore, to the Superintendent of Police, Bangalore City, for execution thereof.

This Criminal Revision Petition coming on for hearing on Thursday the 2nd day of March 1933, the Chief Justice pronounced the following :—

ORDER OF REFERENCE.

The facts which led to the filing of this revision petition are as follows :—

The Sub-Magistrate of Thirupathi issued a bailable warrant against the petitioner on the ground of non-payment of certain motor tax, payable under Section 7 of the Motor Vehicles Taxation Act (III of 1931) which is in force in British India, and on the receipt of the said Warrant, the City Magistrate, Bangalore, forwarded it for execution to the Superintendent of Police, Bangalore City. The petitioner, who is an advocate of this court, presented a petition to the City Magistrate, representing that the warrant in question had been issued by a foreign court under the provisions of the Criminal Procedure Code not in force in the Mysore State for an offence under a local law, that the offence under the said local law was not extraditable and that the said warrant was not executable against the petitioner and he therefore prayed that the warrant may be recalled and retransmitted to the Sub-Magistrate, Thirupathi on the ground of its being incapable of execution.

The City Magistrate disallowed the contentions raised by the petitioner and refused to recall the arrest warrant on the following grounds :—

(1) that the law regulating the surrender of accused persons from Mysore is contained in Chief Commissioner's Notification No. 111, dated 23rd July 1878;

(2) that so far as Warrants of British Indian Courts to the subjects of the Mysore State are concerned the distinction between extraditable and non-extraditable offences does not arise at all; and

(3) that according to the observations contained in Note 2 under Section 1 of the Indian Extradition Act, printed in Sohoni's Criminal Procedure Code in Appendix II,

the provisions of the said Act do not in any way affect demands *vice versa* of British Governments on Foreign or Native States for the surrender of its criminal, as the procedure therefor is regulated by the Treaties, Conventions and arrangements entered into with Foreign and Native States and also by usage.

The petitioner questions the legality of the above findings and has raised the following contentions before this Court for decision :—

(1) that the warrant issued by the Thirupathi Magistrate is not valid since the Criminal Procedure Code in force in British India contains no provision authorising the said Magistrate to issue an arrest warrant for execution by the State Courts or any of its officers;

(2) that the lower court erred in relying upon the Chief Commissioner's Notification as having the force of law capable of enforcement without the same being implemented by an Act of Legislature;

(3) that the said notification cannot in any event affect anything more than procedure; and

(4) that the order of the lower court is opposed to law and procedure.

As the points raised are of very great importance, the following questions are referred to the Full Bench for decision :—

(i) Whether the arrest warrant issued by the Thirupathi Magistrate is valid in law;

(ii) Even if it is not, whether it is executable in the Mysore State by reason of the Chief Commissioner's Notification No. 111 of 23rd July 1878.

(Sd.) P. MAHADEVAYYA,
Chief Justice.

Sd. K. SHANKARANARAYANA RAO,
Judge.

Monday, the 7th day of May 1934.

PRESENT:

Rajadharmapravina
P. MAHADEVAYYA, CHIEF JUSTICE.
MR. JUSTICE M. RAMACHANDRA RAO and
MR. JUSTICE K. SHANKARANARAYANA RAO.

This Criminal Revision Petition coming on for hearing before the Full Bench on Thursday, the 15th day of March 1934, and after hearing the arguments of Mr. C. V. Narasimha Iyengar, Advocate for the petitioner, and those of Mr. A. R. Nageswara Iyer, Government Advocate for the Government of Mysore, the Court expressed the following :—

OPINION.

The Chief Justice

I. The first question, referred to the Full Bench for decision is "whether the arrest warrant issued by the Thirupathi Magistrate is valid in law."

On this question, the petitioner's counsel contends that the arrest warrant has been issued under the provisions of the Criminal Procedure Code in force in British India, which does not authorise the Magistrate to issue such a warrant beyond British India and that the warrant should, therefore, be held to be illegal. We are of opinion that there is considerable force in this contention.

(1) The warrant in question has been issued by the Thirupathi Magistrate under Section 75 of the Criminal Procedure Code. There is no provision in that Code enabling a Magistrate in British India to issue a warrant of arrest to be executed outside the limits of British India. The territorial operation of the British Indian Criminal Procedure Code is limited only to British India as can be seen from Section 1, sub-para (2) of the said Code. Section 82 of the

Criminal Procedure Code provides that a warrant of arrest may be executed at any place *in British India*. This gives rise to a necessary implication that it cannot be executed outside British India, and the Privy Council decision in *Muhammad Yusufuddin* v. *Queen-Empress* (1) is an authority in support of this proposition. In that case, the alleged offence was committed at Simla and was triable there and a warrant of arrest issued by the Simla Magistrate was executed against the accused, a native of the Nizam State in the territory belonging to the Nizam of Hyderabad and in respect of which jurisdiction required for railway purposes had been conceded by the Nizam in favour of the British Government. It was held by Lord Halsbury (Lord Chancellor) that the arrest was illegal. This decision has been followed in *Radha Kishan* v. *Crown* (2). In that case, the accused was arrested at the Railway Station at Gwaliar by the Railway Police in pursuance of a telegram sent by the District Magistrate of Montgomery in the Punjab for an offence under Section 161, Indian Penal Code alleged to have been committed in the Montgomery District, and it was held that the arrest was illegal. In both these decisions, it was held that the warrants issued by the Magistrates in British India were without jurisdiction and consequently null and void.

(2) All commentators are agreed that under Section 82 of the Criminal Procedure Code, a Magistrate in British India is not competent to issue a warrant of arrest for execution outside the limits of British India. See: (1) Woodroffe on Criminal Procedure Code (1926), page 67. (2) Sohoni's Criminal Procedure Code (1931), page 117. (3) Roy's Criminal Procedure Code (1932), page 78. (4) Prinsep's Criminal Procedure Code (1933), page 73.

(3) That a Magistrate of a British Indian Court has no authority to direct the arrest of a person residing at any place beyond British India is a proposition which does not admit of any dispute whatever, and the provision of Section 82, Criminal Procedure Code, which restricts his authority to order the arrest of persons only within the limits of British India, is based on the

1. (1897) 25 C. 20 (P. C.)
2. (1920) 1 Lah. 406.

fundamental maxim that the Legislature does not intend to exceed its jurisdiction. Primarily, the legislation of a country is territorial. The general rule is *extra territorium jus decenti impune non paretur; legis extra territorium non obligant* (one who exercises jurisdiction out of his territory cannot be obeyed with impunity; Laws have no extraterritorial effect). The laws of a nation apply to all its subjects and to all things and acts within its territories. They apply also to all foreigners within its territories (not privileged like sovereigns and ambassadors) as regards criminal, police and indeed all other matters except some questions of personal status or capacity in which, by the comity of nations, the law of their own country or the *lex loci actus* or *contractus* applies. 'Maxwell's Interpretation of Statutes, 7th Edition, at page 123.

(4) Even the English Parliament, though its enactments may extend to the King's subjects while they are abroad, has no power to legislate foreigners out of the dominions and beyond the jurisdiction of the British Crown [*Lopez* v. *Burslem* (1)].

(5) According to international law jurisdiction, to be rightfully exercised, must be founded either upon the person being within the territory, or upon the thing being within the territory; for otherwise there can be no sovereignty exerted, upon the known maxim, '*Extra territorium jus dicenti impune non paretur.*' "No sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions. Every exertion of authority of this sort beyond this limit is a mere nullity". Story's Conflict of Laws (Sec. 539) at page 754. (8th Edition).

(6) "The Legislature has no power over any persons except its own subjects, *i.e.*, persons natural born subjects, or resident or whilst they are within the limits of the kingdom. The Legislature can impose no duties except on them; and when legislating for the benefit of persons, must, *prima facie*, be considered to mean the benefit of those who owe obedience to our laws and whose interests the Legislature is under a correlative obligation to protect." Per Lord Wenslev dale as Baron Part in *Jafferys* v. *Boosey* (2).

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1. (1843) 4 Moo. P.C. 300: 13 E.R. 318
2. (1854) 4 H. L. C. 815.

(7) "Their jurisdiction is confined within their own territories and the maxim which is more than once quoted '*extra territorium jus decenti impune paretur*' would be applicable to such a case. All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed and except over her own subjects Her Majesty and the Imperial Legislature have no power whatever." Per Lord Halsbury, L. C., in *Macleod* v. *Attorney General for New South Wales* (1).

(8) "The power of this country is to legislate for its subjects all the world over and as to foreigners within its jurisdiction but no further. Dr. Lushington in the case of *Zoolverein* (2) cited in *R.* v. *Keyn*, (1876) L. R. 2 Ex. 63 at p. 160).

(9) "I take it the limitation is this, that all laws of the English Parliament must be territorial—territorial in this sense, that they apply to and bind all subjects of the Crown who come within the fair interpretation of them, and also all aliens who come to this country, and who, during the time they are here, do any act which on a fair interpretation of the statute as regards them, comes within its provisions. Of course, it is not necessary that a person to be subject to an English Act should be domiciled here. If he is resident here temporarily and does an act which comes within the intent and purview of a statute, he, as regards that statute, as does every alien who comes here in regard to the laws of this realm, submits himself to the law, and must be dealt with accordingly * * * *But as regards foreigners, there is, prima facie, no right to bind them if they are not here.*', Per Cotton, L. J., in Ex parte *Blain* (3) cited with approval by Lopez, L. J., in Ex parte *Pearson* (4).

(10) Again, no law has any effect of its own force, beyond the limits of the Sovereignty from which its authority is derived, and the penal laws of one country will not be enforced within the jurisdiction of another. British Year Book of International Law, 1931, pp. 97 and 98.

(11) In this connection it may be useful to refer to the following case in which a subject of the Travancore

1. (1891) A. C. 455.
2. (1856) 1 Swa. Adm. 96 : 166 E. R. 1038.
3. (1879) L. R. 12 Ch. D. 522.
4. (1892) L. R. 2 Q. B. 263.

State was attempted to be arrested in Travancore on the authority of an arrest warrant issued by a Magistrate in British India for non-extraditable offences committed in British India. In that case one Issac Nainan who was a Police Inspector of the Travancore State, gave evidence against an European planter in the Madras High Court Sessions. His evidence was disbelieved and Mr. Justice Boddam of the Madras High Court ordered his prosecution for perjury and abetment of false charge. A complaint was accordingly filed before the Presidency Magistrate of Madras who issued an arrest warrant against the Police Inspector. He, however, left Madras and returned to Travancore before he could be arrested. Thereupon the Chief Presidency Magistrate, Madras, addressed the British Resident in Travancore. At the instance of the Resident the Dewan of Travancore wrote to the District Magistrate of Trivandrum to take necessary action for complying with the requisition of the British Resident, and the District Magistrate passed proceedings requiring the Police Superintendent to surrender the Inspector accordingly. The Police Inspector appeared before the District Magistrate by a Vakil and prayed for cancellation of the Magistrate's proceedings directing his arrest on the ground that the said proceedings were illegal; but the Magistrate dismissed his petition. The Police Inspector then applied to a Division Bench of the Travancore High Court who issued a Stay Order, called for the records and referred the matter to a Full Bench. It was held by the Full Bench that as the offences under Sections 193, 195 and 211, Indian Penal Code, were non-extraditable, the Police Inspector could not be arrested in Travancore Territory on the authority of the arrest warrant issued by the Presidency Magistrate, Madras. See: *Isac Nainan* v. *The Sirkar*, (1081) Travancore Law Reports, Vol. 21, page 85 (F. B.)

(12) Writers on International Law are also agreed that excess of jurisdiction is one of the grounds of nullity

It therefore seems to be clear, according to the express terms of Section 82 of the Criminal Procedure Code, as well as the recognised principles of English Law, that the Magistrate of Thirupathi in British India is not legally competent to issue the warrant for execution outside the limits of British India, and that

his warrant is accordingly illegal and without jurisdiction.

II. With respect to the second question contained in the reference the chief contention raised by the petitioner's counsel is that the Chief Commissioner's Notification No. 111 of 1878 must not be deemed to have the force of law since it has not been issued under the authority of the Criminal Procedure Code, and he further argues that the fact of the Notification having been included in the instrument of transfer of 1881 and the subsequent Mysore Treaty of 1913 has not in any way altered its character since it was not embodied in a legislative enactment.

(*a*) As regards the first contention it is no doubt true that the Notification was merely an executive order issued under the authority of the Chief Commissioner in 1878, as can be seen from the instructions of the Under Secretary to the Governor-General in his letter No. 84-J. (Judicial), dated 25th June 1878 and it was not issued under the authority of the Criminal Procedure Code either in 1878 or in 1881 or in 1913. But in those days there was no Legislative Council in Mysore. The State was administered by the British Government and the Governor-General in Council, who possessed both legislative and executive authority, was competent to legislate for Mysore by executive orders. The Governor-General took care at the time of the Rendition to incorporate the Notification of 1878 in the Schedule to the Instrument of Transfer. At the time of the Rendition a Proclamation was also issued by His Highness the Maharaja on 25th March 1881 in the following terms:—

> "We do hereby declare that all laws and rules having the force of law now in force in the territories of Mysore shall continue to be in force within the said territories."

Moreover, the following reservation found in clause 2 of Section 1 of the Mysore Criminal Procedure Code (Regulation II of 1904) has also to be taken into consideration :—

> "Nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

Hence there is no substance in the above contention.

(*b*) As regards the second contention it may be that according to English conceptions Treaties entered into between two nations may not be binding on courts of law unless the terms of the Treaty are incorporated in a legislative enactment. In the well-known case of *Walker* v. *Baird* (1), Lord Herschell has observed as follows :—

> "The learned Attorney General, who argued the case before their Lordships on behalf of the appellant, conceded that he could not maintain the proposition that the Crown could sanction an invasion by its officers of the rights of private individuals whenever it was necessary in order to compel obedience to the provisions of a treaty."

Speaking of the Ashburton Treaty of 1842, Clarke, in his book on Extradition, says as follows at page 38 :—

> "In England the common law being held not to permit the surrender of a criminal, this provision could not come into effect without an Act of Parliament."

Archbold, the well-known author of "Criminal Pleadings," is also of opinion that a Treaty has no binding effect until confirmed by Statute. Archbold's Criminal Pleadings (1931) page 428.

When a treaty involves for its enforcement in England any change in the law administered by any English Court of law, it is necessary in order to give effect to the treaty that Parliament should enact such legislation as may be required to make that change in the law. See: British Year Book of International Law (1928), Vol. IX, page 60.

On the question of "Extradition" the following observations are found in the same volume (at p. 60).—

EXTRADITION :—

> "It lies at the root of our law relating to extradition. The common law prevents the crown from surrendering to another state fugutive criminals who have committed crimes abroad and escaped to Great Britain, and this

1. (1892) A. C. 491 (497).

> common law right is enforceable by writ of *Habeas Corpus*. Therefore, if the Crown wishes to bind itself by treaty to extradite fugitive criminals, it must secure the necessary legislation by Parliament, and any attempt at extradition which does not fall within the scope of a Treaty and of the Extradition Acts, 1870 to 1906, can be defeated by writ of *Habeas Corpus*. And it should be noted that this remedy is open both to the British subject and to the alien."

Professor Dicey also makes the following observations on this subject.—

> " The strongest examples of interference by the Judges with administrative proceedings are to be found in the decisions given under the Extradition, Acts. Neither the Crown nor any servant of the Crown has any right to expel a foreign criminal from the country or to surrender him to his own Government for trial. A French forger, robber, or murderer who escapes from France to England cannot, independently of statutory enactments, be sent back to his native land for trial or punishment. The absence of any power on the part of the Crown to surrender foreign criminals to the authorities of their own State has been found so inconvenient, that in recent times *Extradition Acts* have empowered the Crown to make treaties with foreign states for the mutual extradition of criminals or of persons charged with crime. The exercise of this authority is, however, hampered by restrictions which are imposed by the statute under which alone it exists." Dicey's Law of the Constitution, 8th Edition, pages 220 and 221.

Again, it is necessary to consider another important aspect of this question. Though a Treaty is primarily a compact between two States, its terms may equally affect private rights and obligations. A treaty may empower the surrender of a person charged with certain offences; or it may stipulate for the doing of acts which in some way restrict or invade ordinary rights. Hence in each

system it is important to ascertain the relation in which treaties stand to the law of the land—whether, in fact, such treaties if duly made, will of their own force operate as law, or whether, in so far as they affect private rights and obligations they require some legislative or other sanction. Again, it is well settled that the Courts in interpreting and applying Municipal Law, cannot give effect to the rules of the Law of Nations however clear, in a case where such rules derogate from or are inconsistent with the positive Regulations of Municipal Law. With respect to treaties, in particular, the Crown or executive cannot claim, in virtue of any obligations raising out of a treaty not sactioned by statute, to modify or interfere with rights arising under the ordinary law of the land. It has to be observed that when either party engages to perform a particular act, the treaty addresses itself to the political, not to the Judicial Department, and the Legislature must execute the contract before it can become a rule of the Court. In the United States, however, a different principle is established since the constitution declares a treaty to be the Law of the land. It is consequently to be regarded in Courts of Justice as an equivalent to an Act of Legislature, whenever it operates of itself, without the aid of any legislative provision. See Cobbett's leading cases on International Law, Part I, pages 21, 22 and 23.

Professor Oppenheim is also of the same opinion. According to him the binding force of a treaty concerns the contracting States only, and not their subjects. If treaties contain stipulations with regard to rights and duties of the subjects of the contracting States, their courts, officials, and the like, these States have to take such steps as are necessary, according to their Municipal Law, to make these stipulations binding upon their subjects, courts, officials, and the like. It may be that according to the Municipal Laws of some countries, the official publication of a treaty concluded by the Government is sufficient for this purpose, but in other countries other steps are necessary, such as, for example, special statutes to be passed by the respective Parliaments. Oppenheim's International Law, page 677.

But the above principles cannot be said to govern the present case. The Instrument of Transfer of 1881 and the Mysore Treaty of 1913 stand on a different footing since His Highness the Maharaja, who is

the source of all legislation in the Mysore State, was himself a party to the above treaties. Considerations of a different character have therefore to be applied, and it cannot be said that the Notification of 1878 did not obtain legislative sanction.

We are therefore of opinion that the Chief Commissioners' Notification of 1878 which has been included in the instrument of transfer of 1881 as well as in the Mysore Treaty of 1913 must be deemed to have the force of law within the Mysore State although it was not embodied in a legislative enactment, and that there is no force in the contention raised to the contrary.

III. (1) This finding leeds us to the next important question for consideration, *viz.*, whether the Notification of 1878 can be said to preclude the petitioner from contesting the validity of the arrest warrant in a court of law. The answer to this question involves an examination of the legal rights of a subject of the Mysore State. It has to be borne in mind that the Chief Commissioner's Notification is in force in Mysore as an adjective law and deals only with a matter of procedure and relates to the mode of execution of processes, and it cannot be said to affect the substantive rights of parties. It is a natural and substative right of every citizen of a State to claim protection against an illegal arrest, and there is nothing in the Instrument of Transfer (1881) or in the Mysore Treaty of 1913 to take away such an inherent right from a subject of the Mysore State, or to prevent him from testing before a court of law the legality of his arrest or the jurisdiction of a Magistrate in British India to direct his arrest in the case of a non-extraditable offence. It is also well settled that there can be no such thing as an "Act of State" between a sovereign and a subject. In this connection, it may be relevant to quote the following observations of Sir James Stephen.

> "As between the sovereign and his subjects there can be no such thing as an "Act of State." Courts of law are established for the express purpose of limiting public authority in its conduct towards individuals. If one British subject puts another to death by the express command of the King, that command is no protection to the person who executes it, unless it is in itself lawful, and it is the duty

of the proper courts of justice to determine whether it is lawful or not." Stephen's History of the Criminal Law, Vol. II, page 65.

(2) The Privy Council have, in a recent case (*Chaturbhuj Piramal* v. *Chunilal Oomkarmal* (1), pointed out that the Government of India cannot by an executive act confiscate the property of a subject, and on the same principle, it is equally well understood that a subject cannot be arbitrarily arrested on the authority of an executive order. In a constitutional and enlightened Government, inspired by English conceptions of law and justice, there is the supremacy or predominance of regular law as opposed to the influence of arbitrary power on the part of the Government. It is a fundamental principle that no one can lawfully be restrained or punished except for a violation of the law established to the satisfaction of a Judge or Magistrate in proceedings regularly instituted in one of the ordinary courts of justice. The right of personal liberty, which in the words of Professor Einstein "has brought every advance of human knowledge, culture and invention, and without which life to a self-respecting man is not worth living," is the right not to be arrested or detained or otherwise subjected to physical restraint except in accordance with the law, and it is only the result of the application of the fundamental principle above referred to. Again, no one who is charged with a violation of the law can effectively plead, either in a civil or a criminal court, that his act was done in obedience to the command of a superior, even the command of the King himself. According to Lord Howart, Chief Justice of England, the maxim that "the King can do no wrong", imports not only that the King cannot be proceeded against for any alleged wrong, but also that he cannot authorise any wrongful act so as to justify the wrong-doer. Hence, every subject is entitled to approach a court of law for protection against his illegal arrest, and this fundamental right of the subject cannot be said to have been affected by the rule of procedure contained in the Notification of 1878.

(3) The language employed in the Notification furnishes one more ground to the petitioner to question

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1. (1933) A. L. J. 629 (636) : 57 B. 474 (P. C.)

the legality of the process. The notification provides that "Processes of British Indian Courts shall be acted upon and executed by all Magistrates and Police Officers in Mysore, under the same conditions and in the same manner, as if such processes had been issued by a Magistrate having jurisdiction in Mysore. This is the principle urged by the Under Secretary to the Governor-General in his letter, dated 20th September 1877, to the Chief Commissioner, and it is the same principle on which the Notification of 1878 is also based. The result is that the process issued by the Thirupathi Magistrate is to be placed on the same footing and treated as being subject to the same conditions as the process of a Mysore Court according to the terms of the notification. Since a Mysore subject is not precluded from consisting the legality of the process of a Mysore Court, or from asking the said court to examine any legislative provision and determine its nature, scope and application, he must be held to be equally entitled to contest the legality of his arrest and to question the jurisdiction of the Thirupathi Magistrate to direct his arrest in the present case.

IV. We now proceed to examine the exact scope and object of this Notification, which has undoubtedly the force of law in the Mysore State and for this purpose reference can be made to the correspondence on the subject on the authority of the Prevy Council decision in *Muhammad Yusufuddin* v. *Queen Empress* (1). The correspondence that took place on this subject between the Chief Commissioner of Mysore and the Under-Secretary to the Government of India, Foreign Department, throws a considerable amount of light on the exact scope of the Notification.

(1) Letter No. 84(J) (Judicial), dated, Simla, 25th June 1878, from the Under-Secretary to the Government of India, addressed to the Chief Commissioner of Mysore, contains the exact circumstances which led to the issue of this Notification. It appears that the Planters' Association of Vynad had presented to His Excellency the Viceroy a memorial complaining of the loss and inconvenience caused to their Industry by the formalities then attendant upon the extradition of criminals from Mysore to the Vynad. To remove these

1. (1897) 25 C. 20 (P. C.)

the legality of the process. The notification provides that "Processes of British Indian Courts shall be acted upon and executed by all Magistrates and Police Officers in Mysore, under the same conditions and in the same manner, as if such processes had been issued by a Magistrate having jurisdiction in Mysore. This is the principle urged by the Under Secretary to the Governor-General in his letter, dated 20th September 1877, to the Chief Commissioner, and it is the same principle on which the Notification of 1878 is also based. The result is that the process issued by the Thirupathi Magistrate is to be placed on the same footing and treated as being subject to the same conditions as the process of a Mysore Court according to the terms of the notification. Since a Mysore subject is not precluded from consisting the legality of the process of a Mysore Court, or from asking the said court to examine any legislative provision and determine its nature, scope and application, he must be held to be equally entitled to contest the legality of his arrest and to question the jurisdiction of the Thirupathi Magistrate to direct his arrest in the present case.

IV. We now proceed to examine the exact scope and object of this Notification, which has undoubtedly the force of law in the Mysore State and for this purpose reference can be made to the correspondence on the subject on the authority of the Prevy Council decision in *Muhammad Yusufuddin* v. *Queen Empress* (1). The correspondence that took place on this subject between the Chief Commissioner of Mysore and the Under-Secretary to the Government of India, Foreign Department, throws a considerable amount of light on the exact scope of the Notification.

(1) Letter No. 84(J) (Judicial), dated, Simla, 25th June 1878, from the Under-Secretary to the Government of India, addressed to the Chief Commissioner of Mysore, contains the exact circumstances which led to the issue of this Notification. It appears that the Planters' Association of Vynad had presented to His Excellency the Viceroy a memorial complaining of the loss and inconvenience caused to their Industry by the formalities then attendant upon the extradition of criminals from Mysore to the Vynad. To remove these

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formalities, the Chief Commissioner had been instructed to issue an executive order directing that the processes issued by Vynad criminal courts, and claims for the surrender of accused persons to Vynad Magistrates, should be treated and respected by the Magistrates and Police of Mysore as if such processes had been issued, or such claims had been made by Magistrates of a neighbouring Mysore District. After the issue of an order in compliance with the above instructions, further proposals were sent up to the Government of India regarding the processes issued by Magistrates in other Districts in British India, and after some correspondence, the following observations and orders were issued to the Chief Commissioner under the authority of the Governor-in-Council :—

"First, as regards the execution of British Processes in Mysore:—The Governor-General in Council is of opinion that to enable the Mysore Courts to respect the civil and criminal processes issued by the Courts of British India, nothing more is required than an executive order of Government.

In so far as criminal processes are concerned, an order has already been published to meet the case of processes issued by Magistrates of the Vynad District. It would only be necessary now to extend the scope of this order so as to include processes issued by the Magistrates of all other Districts in British India.

At the same time an order might be issued by you directing all civil courts in Mysore to respect the civil processes of British Indian Courts as they would respect the civil processes of neighbouring courts in Mysore."

The above correspondence unmistakably points to the conclusion that the Chief Commissioner's Notification of 1878 was issued in order to simplify the procedure and to avoid the formalities attendant upon the extradition of criminals.

(2) In the Manual of "Procedure relating to Extradition" published under the authority of the Madras Government in 1911, the Notification of 1878 has been expressly referred to as representing the arrangement between the Mysore State and British India to regulate the procedure in extradition cases. See paras 56 and 57 at page 19 of the Manual.

(3) Again, from the correspondence that led to the issue of the Notification it can be inferred that the

only classes of cases proposed to be added, to those mentioned in the Second Schedule of the Extradition Act to which the Notification in question was intended to apply, were two in number, *viz.*,

(1) fraudulent breaches of labour contracts, and

(2) abetment of heinous crimes.

Because Mr. Gordon, Chief Commissioner, while addressing the Government of India in his letter No. 815—J. 11, dated 4th May 1878, sent up along with that letter a copy of his memorandum dated 12th March 1878 containing the following recommendation :—

> "A special arrangement being made for Coorg, Wynad and Neelgherries as already stated, *the rule for the rest of British India should be that any offender* (whatever his offence) *should not be required to be surrendered to British India, but there must be a definite list of offences in regard to which alone mutual rendition shall be made.* The Second Schedule of this Act (Extradition Act) does not require much enlargement, *but fraudulent breaches of labour contracts and some other offences such as abetment of heinous crimes, etc.*, can with advantage be added to the list given in this Schedule." It therefore seems to be clear beyond any doubt that the notification in question was intended to be applicable only to extraditable cases, and to two more cases proposed to be added in the Chief Commissioner's Memorandum, *viz.*, (1) Fraudulent breaches of contract, and (2) Abetment of heinous offences, but not to all offences under all conceivable enactments.

(4) The terms of the Chief Commissioner's Notification No. 111 are, however, as follows :—

> "Under the authority of His Excellency the Viceroy and Governor-General in Council, the Chief Commissioner directs that all criminal processes *of whatever description* when issued by any Magistrate *having jurisdiction* in any District of British India, shall be acted upon and executed by all Magistrates and Police Officers in Mysore, under the same conditions, and in the same

manner, as if such process had been issued by a Magistrate having jurisdiction in Mysore."

It is true that the notification has been expressed in very wide terms, but that by itself cannot be treated as a justification to claim an unlimited scope for its operation. The words "any Magistrate having jurisdiction" in the above notification seem to be important. The expression "Jurisdiction" must be deemed to mean not only jurisdiction to try the case but also *jurisdiction to give a particular direction embodied in the process to be executed.* As observed by Hawkins, J. in *Queen* v. *Hughes* (1), *there is a marked distinction between the jurisdiction to take cognisance of an offence and the jurisdiction to issue a particular process to compel the accused to answer it.* The former may exist; the latter may be wanting. It has also to be observed that jurisdiction to issue a process against a person is one that can only be derived from a statute. *A court taking cognisance of a crime has no inherent power, apart from the statute, to issue a process.*

(5) Again, the words "all criminal processes of whatever description" in the Notification are very general and cannot be said to be free from ambiguity. The expression "all criminal processes" cannot certainly be held to include *illegal processes* as well, since such an interpretation is opposed to recognised canons of interpretation and is likely to lead to illegality and injustice.

It is a well-known rule of interpretation that whenever the language of the Legislature admits of two constructions and, if construed in one way, would lead to obvious illegality or injustice, the courts have to act upon the view that such a result could not have been intended, unless the intention has been manifested in express words. (*Vide* Maxwell's Interpretation of Statutes, 7th Edition, page 174).

In the present case, the expression "*jurisdiction*" in the Chief Commissioner's Notification *has to be interpreted as jurisdiction also to give the particular direction embodied in the process to be executed, since a contrary interpretation would lead to an obvious illegality.*

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1 (1879) L R. 4 Q. B. D. 614 (624).

(6) The mode of interpretation must also be in favour of the subject, and this view is supported by the following observation of Lord Abinger:—

> "The interpretation of Statutes has always, in modern times, been highly favourable to the personal liberty of the subject, and I hope will always remain so." Lord Abinger in *Henderson* v. *Sherborne*.(1)

(7) Again, expressions similar to the expression "*Whatsoever*," found in the Chief Commissioner's Notification, have also received judicial interpretation in decided cases. In *Macleod* v. *Attorney General for New South Wales*, (2), the provisions of Section 54 of the Criminal Law Amendment Act of 1883 formed the subject of judicial interpretation. The said Section ran as follows:—

> "*Whosoever* being married marries another person during the life of former husband or wife, *wheresoever* such second marriage takes place, shall be liable to penal servitude for seven years."

It was held that the words "*whosoever*" and "*wheresoever*" in the above section had only a limited meaning and must be intended to apply only to those actually within a jurisdiction of the Legislature and that consequently there was no jurisdiction in the Colony to try the accused for the offence of bigamy alleged to have been committed in the United States of America. Applying the above principles to the present case, the expression "all processes of whatsoever description" must, therefore, be deemed to mean only valid processes issued by a court competent to issue them.

(8) In the present case, it is the non-payment of a tax under *the Madras Motor Vehicles Taxation Act (1931)*, which is a fiscal enactment, which has led to the issue of the arrest warrant against the petitioner. We do not desire to be understood as in any way justifying the conduct of the petitioner in not paying the tax which he should have paid at Thirupathi. In fact, being a Legal Practitioner, it was his duty to have obeyed the law and paid up the tax. But we are now

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1. (1837) 150 E. R. 743; 2 M. & W. 236.
2. (1891) L. R. A. C. 455.

concerned only with the legality of the arrest warrant issued by the Thirupathi Magistrate against a non-resident foreigner living beyond his jurisdiction with a direction to arrest him for a non-extraditable offence. It cannot be claimed that the arrest warrant against the petitioner was issued on the authority of the Chief Commissioner's Notification of 1878. The Magistrate himself does not say so, and his warrant purports to have been issued under Section 75 of the Criminal Procedure Code. The Chief Commissioner, who was the author of that Notification was administering the Mysore State at the time, and hence his Legislative competence cannot be said to have extended beyond the limits of the Mysore State. Moreover, since the warrant issued by the British Indian Magistrates was illegal for want of jurisdiction, as already found by us, it is also not open to the said Magistrate to invoke the aid of the Chief Commissioner's Notification of 1878 to legalize his action for the simple reason that the said Notification cannot be deemed to confer jurisdiction on British Indian Magistrates which they do not otherwise possess under the Criminal Procedure Code in force in British India. Since the warrant was illegal in its inception, all proceedings taken under it must be deemed to be void, and it cannot be claimed that the Notification is capable of curing such an illegality.

V. (1) Again, any attempt to extend the operation of the Notification to cases other than extraditable offences will be inconsistent with the original object and scope of the said Notification and also repugnant to the recognised principle and policy of extradition law. "Extradition" is the delivery of a prosecuted individual to the State on whose territory he has committed a crime by the State on whose territory the criminal is, for the time staying, and there is no legal duty in existence under International Law which commands extradition. The solution of the problem of extradition in the form of treaties is a product of the nineteenth century only, and English public opinion was for many years against extradition treaties at all, considering them as a great danger to individual liberty. *See* Oppenheim's International Law, Vol. I, pages 503 and 505.

Hall is also of the opinion that Positive International Law does not recognise the duty of extradition,

that surrender has been treated as an act of "comity", by which is to be understood the rules of politeness and courtesy observed by States in their mutual intercourse, and that in view of the greater facility of travel in recent times having given criminals more opportunities of escaping from the scence of their crime, it has become necessary for nations to enter into express agreements with the object of obtaining extradition of criminals *for specified crimes under specified conditions.* Hall's International Law, pages 59 and 60.

Lord Birkenhead says that it is impossible to allege, that there exists, apart from treaty, a common law right to demand the extradition of criminals, that there would have been no occasion otherwise for the great number of treaties by which it has been expressly secured, and that it was on this ground that Holland in January 1920 refused to extradite the German ex-Emperor at the demand of the Allied Powers. Birkenhead's International Law, page 130.

According to Clarke extradition of criminals is an international duty. It may not be scientifically described as a duty of perfect obligation, but it is a duty of political morality. Clarke on Extradition, page 255.

(2) All writers on International Law are agreed that the policy of extradition law is to secure *offenders guilty of only grave crimes* and not purely local crimes or of slight offences, and while speaking of the terms of the Ashburton Treaty of 1842, President Tylor informed the Senate as follows :—

> "The article on the subject of extradition in the proposed treaty is carefully *confined to such offences as all mankind agree to regard as heinous, and destructive to the security of life and property.*"

While criticising the provisions of Extradition Act of 1873, Sir Edward Clarke makes the following illuminating observations :—

> "The Act of 1873 was carelessly or ignorantly drawn, and its three chief provisions were far from being improvements on the law they altered. It should be remembered that extradition cannot safely be allowed to become a matter of ordinary police. A person who is found living in Great Britain is

prima facie entitled to the protection of her laws, and should not be delivered over to a foreign jurisdiction except upon a serious charge, and after strict precautions taken against injustice being done. The Act of 1873 so extends the schedule of crimes that a treaty might now be made and put in force, under which *persons should be surrendered for doing wilful damage to a tree or for boxing a boy's ears in the street.* Of course, it is not likely that such a treaty will be made, but there was no occasion to pass an Act of Parliament to make such a folly possible." Sir Edward Clarke on Extradition pages 256 to 257. See also Sir James Stephen's History of the Criminal Law of England, Vol. II, page 68.

(3) It is also well settled that the act complained of must constitute a "crime" according to the Criminal Law of both the countries. Oppenheim says at page 508 that no person should be extradited whose deed is not a crime according to the Criminal Law of the State which is asked to extradite, as well as of the State which demands extradition. See also Phillimore's International Law, Vol. I, page 521.

(4) On this important topic the English Commission of 1878 have reported as follows:—

"If the question be asked, whether we should refuse to give up a fugitive where the offence in respect of which the surrender is asked for, though an offence against the law of the country asking it, is not an offence against our own, the answer is involved in what has been already said. *The crimes* in respect of of which nations should make common cause against criminals, and refuse *them* shelter, *are those which it is the common interest of all to repress. There are offences against society in respect of person and property* which in all countries there will always be found persons disposed to commit, and which can only be kept under by the strong arm of the law. *It is these offences which it should be the common purpose of all nations to endeavour to*

suppress, by preventing those who have committed them from escaping from justice. But these offences are known to, and dealt with by, the law of all civilised nations, though they may be differently dealt with both as to procedure and punishment. *If some offence unknown to the law of other nations*—to what may figuratively be called the common law of nations—*should be created by the law of a particular people, such an offense would not come within the category of crimes* which it is the purpose of extradition to repress." Wharton on the Conflict of Laws, Vol. II, pages 1655 and 1656.

(5) It will thus been seen, according to the authorities above referred to, that the application of the Notification of 1878 to the facts of the present case will be repugnant to the spirit and policy of extradition law as understood and followed in England, since the non-payment of the tax by the petitioner is neither an extraditable offence, nor a "crime" to justify a demand for his surrender or an offence according to the Criminal Law of both the countries. Nor is it open to Magistrates in British India, or even to their Governments, to extend the schedule of crimes fixed under the Extradition Act so as to include petty or Municipal offences. If a Magistrate in British India is held competent to issue an arrest warrant against a subject of an Indian State, over whom he has admittedly no jurisdiction, on the ground of the non-payment of the motor tax as in the present case, and Magistrates in the Mysore State bound to execute it on the authority of the Notification of 1878 as stated by the City Magistrate, there is nothing to preclude British Indian Magistrates to issue similar warrants against the subjects of the Mysore State for every petty offence under the Indian Penal Code or even Municipal Offences, and this may certainly lead to inconvenient and undesirable results for obvious reasons. Such a result was never intended by the Notification of 1878 and its author, *viz.*, the Chief Commissioner cannot certainly be said to have then within his contemplation the framing of the Madras Motor Vehicles Taxation Act fifty-three years thereafter or the application of the terms of the Notification for offences under such an enactment.

(6) This view is further supported by the following clause occurring in the proviso to section 188 of the Mysore Criminal Procedure Code which has been approved by the Government of India :—

> "*Where it is an offence for which extradition could be demanded by British Government.*"

Because if the Notification of 1878 had really been intended to be applicable to all kinds of offences and not merely to extraditable offences, there would have been no need for the above clause in Section 188, Criminal Procedure Code.

(7) The issue of the warrant is also opposed to the Standing Orders of the Government of India on the subject, and this view is supported by the following passages appearing on page xxxi in Appendix II of Sohoni's Code of Criminal Procedure, (1931) : —

> "Act XV of 1903 does not profess to deal with the matter of requisitions for the surrender of criminals who have fled from justice out of British India into a Native State, but with the converse. The standing order on the subject by the Government of India is that "where such a demand is made it should be by our Magistrates, not to the State direct, but through the Political Officer; and the demand should invariably be accompanied by a copy of any depositions made, or where no evidence has yet been taken, by a statement of the information on which the arrest of the offender is deemed necessary. It should rest with the Political Agent if necessary, to call on the Magistrate for further information, but if the Political Agent possesses the influence and weight he ought to have, he will seldom fail to obtain *compliance with any reasonable demand made to the Durbar* to which he is accredited for the surrender of an absconded criminal. As to what is a '*reasonable demand*,' the Government of India state that it certainly includes the case of all offences (*vide* Schedule I of Act XV of 1903) for which the arrest and removal of criminals escaping into British India is allowed ; and that *some cases* outside of that catalogue may

probably be added with propriety. *Such instances, however, would be exceptional and the requisitions for surrender should not be made without the sanction of the Governor-in-Council, where the offence is not one of those mentioned in the Schedule above* cited, or where the Political Agent doubts the reasonableness of the grounds of the requisition, and the Magistrate of the District continues to press it." (Government Order dated 12th April 1875, No. 219, Political).

Procedure in arrest.—"Officers of the Magistracy, in applying for the arrest and surrender of criminals who have escaped from British India into a Native State, should do so by means of a letter addressed to the Political Agent concerned. The issue of a warrant in such cases is clearly irregular and unauthorised." (G. O., dated 3rd May 1875, No. 258, Political).

The policy of the Government of India, as laid down in the above Government Orders is that the demand to be made must be a "*reasonable demand.*" As regards cases of offences which are excluded from the Schedule to the Extradition Act, the Government of India have indicated that the policy to be followed by the British Indian Courts should be *to confine the 'reasonable demands' only to instances of an exceptional character,* and they have laid down the further condition that *requisitions should not be made without the sanction of the Governor-in Council* where the alleged offence cannot be brought with the Schedule above referred to. They have also pointed out that the *issue of a warrant in such cases is irregular and unauthorised.*

VI. It may also be useful to make a scientific examination of the nature of the wrong doing involved in the conception of a "crime" and the necessity for the State to take direct disciplinary action in its repression. It is well-settled that the wrong doing directly and seriously threatens the security or well-being of society and that it is therefore not safe to leave the crime to be redressed only by the party injured. "Wronged individuals are sometimes timid, sometimes supine, sometimes lazy, sometimes unable for one case or another to pursue their remedy. For the suppression of injuries wrong doing must not be left to the mercy of such accidents,

and must be controlled by some public authority more powerful and less erratic than the private party."

This is the accepted view of English Law. In Halsbury's Laws of England a "crime" is defined as follows:—

> "A crime is an unlawful act or default which is an offence against the public, and renders the person guilty of the act or default liable to a legal punishment. While a crime is often also an injury to a private person, who has a remedy in civil action, it is an act or default contrary to the order, peace and well-being of society that a crime is punishable by the State." Halsbury's Laws of England, Volume IX, Section 499.

It is also stated that this fundamental element of crime was very well evidenced by the fact that the old form of indictment always concluded with the solemn denunciation that "the offence was an injury to the peace and the Crown and the dignity of Our Lord the King." The whole history not only of English Law but of all civilized Criminal Law teaches us the lesson that the Law of Crimes and Remedies drew its nourishment from "the all embracing atmosphere" of the King's peace.

Thus there is something more in the notion of a "crime" than a mere breach of a legal rule. The "public" aspect of a crime depends upon a strong element of morality in the wrongfulness of the crime, and hence the belief by all civilized nations that it required direct repression by the organized forces of the State. The conception of "Intrinsic wrongfulness" is the most outstanding feature in the whole Jurisprudence of crime, and in popular language the very idea of "crime" denotes something which shocks deeply rooted instincts, and courts ordinarily detect in "crime" something of a peculiarly disgraceful nature. The principle of social expediency also predominates in modern societies, and hence although intrinsic wrongfulness is characteristic of many crimes they are punished not merely because they are wrongful, but because they are wrongful in a degree which is a menace to society. See Legal Studies and Essays in Jurisprudence by C. K. Allen, (1931), pages 237 and 238.

The word "Crime" is not also defined in the Indian Statutes. In the case of *Moghul Steamship Co.*, v. *Megregor, Gow & Co.* (1), Lord Esher observed that a "crime" is a wrong against the public welfare. Similar is the meaning given to the word "crime" in Bouvier's Law Dictionary. "Crime" is defined as an act committed or omitted in violation of a public law forbidding or commanding it; a wrong which the Government notices as injurious to the public and punishes in what is called a criminal proceeding in its own name. It generally denotes an offence of a deep and atrocious dye.

In the present case the essential elements involved in the conception of a crime are totally wanting, and the petitioner cannot be deemed to have committed a wrong which the Government can consider as injurious to the public. Judged by the above tests the non-payment of the motor tax by the petitioner cannot be said to constitute a "crime" in the sense in which it is understood in English as well as Indian Law; and since the Law of Extradition confines itself to serious crimes only, a proposition which admits of no doubt whatever, there is absolutely no justification to invoke the aid of the law relating to "Extradition".

VII. It will be seen from the above discussion that the Law of Extradition was unknown to English Common Law, that it received recognition from the 19th century and onwards and has been confined to specified "crimes" of a serious character deserving of repression in the interests of all mankind, and that the policy of the law in England, America and India is not to extend the schedule of such crimes. Local crimes and minor offences have always been excluded, and in cases of non-extraditable offences the policy is to restrict the application of Extradition Law to instances of an exceptional character and not to allow Magistrates to take any direct action. It would, therefore, be opposed to recognized canons of interpretation to hold that the Notification of 1878 underlies a contrary policy or that the Chief Commissioner was competent to depart from the recognized principles of the Law of Extradition as understood in England and India and lay down different principles in the notification authorising its extension

1. (1898) 23 Q. B. D. 598 (606).

to every conceivable offence even under enactments which could not possibly have been within his contemplation in 1878. Nor can the surrender of the petitioner be demanded for the breach of a law which is not punishable in Mysore. Moreover, as has already been pointed out it is also opposed to recognized principles of criminal jurisprudence to treat the non-payment of the tax as equivalent to the commission of a grave "crime" and to subject the petitioner to the indignity of being arrested as a criminal.

The Notification is unsuitable to modern conditions and acts oppressively against the subjects of the Mysore State in particular. From the point of view of political science the position of the Indian States is unprecedented in history, and the relationship between the States and the British Government can be said to be the outcome of an evolutionary process by means of varying formulas employed and conditions prescribed during successive treaty making periods. It has to be observed that the policy regulating the relationship of the States with the Paramount Power has distinctly changed since 1920. Ideas of conference and co-operation are steadily gaining ground every day. The political method and procedure of the Government of India have also been revised in many respects, and even the formation of a "Chamber of Princes" evidences the abandonment of the old policy of isolating the States from each other. See: "Political India" by Sir John Cumming, (1933), pages 259-263. English Year Book of International Law, 1930, page 61.

It is, therefore, clear that there has been a distinct and undoubted change in the nature of the political relations between Indian States and the Paramount Power since the Notification of 1878. On the eve of the grant of constitutional reforms for India and while negotiations are in progress to settle the terms of Federation on the basis of strict adherence to the principles of equality and justice, it is not open to Magistrates in British India to attempt to interpret old notifications and terms of treaties in such a way as to affect the fundamental rights of the subjects of Mysore.

For the above reasons, we have no hesitation in holding that the Notification of 1878 is not applicable to

the present case and that the arrest warrant is not executable in the Mysore State.

Sd. P. MAHADEVAYYA,
Chief Justice.

Mr. Justice M. Ramachandra Rao :—I agree.

Sd. M. RAMACHANDRA RAO,
Judge.

Mr. Justice K. Shankaranarayana Rao :—I agree.

Sd. K. SHANKARANARAYANA RAO,
Judge.

Monday the 7th Day of May 1934.

PRESENT.

Rajadharmapravina, P. MAHADEVAYYA,
CHIEF JUSTICE

AND

MR. JUSTICE K. SHANKARANARAYANA RAO.

This Criminal Revision Petition coming on for final orders this day, the Chief Justice pronounced the following—

ORDER.

Following the opinion of the Full Bench, we hold that the order of the City Magistrate cannot be upheld. We therefore allow this Revision Petition and set aside the order of the City Magistrate with a direction that he will return the warrant to the Court that issued it as being unexecutable.

Sd. P. MAHADEVAYYA,
Chief Justice.

Sd. K. SHANKARANARAYANA RAO,
Judge.

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